



THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(Statutory Body under an Act of Parliament)
CMA Bhawan, 3 Institutional Area,
Lodhi Road, New Delhi-110003

Phone : +91-11-24622156-57-58
011-24666109
Mail id-discipline.director@icmai.in
Website : www.icmai.in

DISCIPLINARY DIRECTORATE

The Institute of Cost Accountants of India
Disciplinary Committee u/s 21B of The Cost Accountants Act 1959

In the matter of -

Complaint No. Com/21-CA(118)/2023 -

CMA Avinash Kumar (M/32170) _____ Complainant

Vs.

CMA Nand Nandan Sharma (M/21494) _____ Respondent

Quorum

1. CMA Bibhuti Bhusan Nayak - Presiding Officer
2. CMA - Manoj Kumar Anand - Member
3. CMA Ashwin G Dalwadi - Member
4. Shri Saraswati Prasad, IAS (Retd.) - Nominee of Central Government, Member
5. Smt. Meenakshi Sharma IA & AS (Retd.) - Nominee of Central Government Member

ORDER

Facts

1. The Disciplinary Directorate was in receipt of a complaint in Form I dated 15th May 2023 (received by the Disciplinary Directorate on 20th May 2023) together with the prescribed complaint fee of Rs 2950/- (inclusive of GST) from CMA Avinash Kumar (hereinafter referred to as the "complainant"), bearing membership number 32170 against CMA Nand Nandan Sharma, (hereinafter referred to as the "respondent") bearing membership number 21494, containing certain allegations against the respondent falling under various clauses of the First and the Second Schedule to the Cost Accountants Act, 1959.
2. On receipt of the instant complaint, an acknowledgement was sent to the complainant vide letter No. G/DD/Com-CA(118)/01/05/2023 dated 25th May 2023. After scrutiny, the complaint was registered in terms of Rule 5 of the Cost and Works Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 and the same was proceeded with in the manner as prescribed in Chapter III of the Rules. The complaint was





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registered by the Disciplinary Directorate by giving a unique complaint number, Complaint No. Com/21-CA(118)/2023

3. The complaint was inter alia made on the following grounds:

- (I) He had accepted a position as Cost Accountant previously held by another cost accountant in practice without first communicating with him in writing. {Clause (8) of the Part I of First Schedule to the Cost Accountants Act, 1959}.
- (II) In the opinion of the Council he brings disrepute to the profession or the Institute as a result of his action whether or not related to his professional work. [Clause (2) of Part IV of First Schedule to the Cost Accountants Act, 1959].
- (III) Contravenes any of the provisions of this Act or the regulations made there under or any guidelines issued by the Council. [Clause (1) of Part II of Second Schedule to the Cost Accountants Act, 1959].
- (IV) M/s. Shome and Banerjee, Cost Accountants were the Cost Auditors of Continental India Private Limited from 2011-12 and continued as cost auditors till 2021-22. Certified true copy of copy of Board resolutions dated 26.06.2019, 15.09.2020 and 13.07.2021 would reveal that M/s. Shome & Banerjee was appointed for the financial years 2019-20, 2020-21 and 2021-22 at a remuneration of Rs 2.50 lacs [Rupees Two lacs and fifty thousand only] per year plus reimbursement of out of pocket expenses as may be incurred by the Cost Auditor during the cost audit subject to ratification of the same at the Annual General Meeting of the Company for the respective financial years. [Copies enclosed]. Thus, the extract of the certified true copy of the resolution for these three consecutive years clearly bear evidence of the fact that M/s. Shome and Banerjee, Cost Accountants were the Cost Auditors of Continental India Private Ltd. This fact is also brought out in the Directors Report [pursuant to Section 134 of the Companies Act, 2013] for the years ended 31st March 2020, 31st March 2021 and 31st March, 2022 wherein under the heading "Cost Auditors", there is a clear mention of the fact that M/s. Shome & Banerjee, Cost Accountants, were appointed as Cost Auditors of the company for the financial years 2019-20, 2020-21 and 2021-22 in accordance with the provisions of Section 148 of the Companies Act 2013.
- (V) On or about 22/06/2022, the Company requested us to submit our Consent Letter for reappointment as cost auditor for the financial year 2022-23 and the same was submitted by email (copy of email attaching the consent letter and the consent letter dated 22/06/2022 attached).



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- (VI) Subsequent to sending the consent letter dated 22/06/2022, on the request of the Company to provide them with a fresh quotation giving details of the scope of work, we submitted the same by email vide our letter No. S&B/74/2022 dated 23/08/2022
- (VII) Again, Company requested us to provide no regret offer for cost audit by email on 30.08.2022 for which reply was sent to the Company by email on 01/09/2022
- (VIII) After submitting the above quotation nothing more was heard from the company. We came to know that one M/s. N.N. Sharma (respondent) has been appointed as the cost auditor of Continental India Private Limited at a remuneration of Rs. 1.55 Lakhs from the Annual Report of the Company published on 05/09/2022. Extract of Annual Report for 2021-2022 was attached.
- (IX) It is hereby stated that the respondent did not communicate in writing with us, i.e. M/s. Shome & Banerjee, Cost Accountants, who were the previous auditors whom the Respondent was replacing and accepting the appointment as Cost Auditor of Continental India Private Limited thereby clearly contravening the provisions of Clause (8) of Part I of First Schedule to the Cost Accountants Act, 1959.
- (X) This act of M/s. N.N. Sharma of not communicating with the previous cost auditor has brought disrepute to the profession and thereby clearly contravening Clause (2) of the Part IV of First Schedule to the Cost Accountants Act, 1959.
- (XI) The Council of the Institute of Cost Accountants had specifically issued a format of the communication that any Cost Accountant should address to the previous cost auditor/cost accountant whenever such Cost Accountant accepts the position of cost auditor/cost accountant and the same was published by the Professional Development Committee of the Council in the book entitled "Guidance Note on Companies (Cost Records and Audit) Rules, 2014" published by the Institute in January 2016.
- (XII) The Council has reiterated its decision in a number of subsequent notifications mentioning therein that the communication to the previous cost auditor has to be made mandatorily by every cost accountant as per the prescribed format and violation thereof will be considered as contravention of Clause (8) of Part I of First Schedule to the Cost Accountants Act, 1959. The Respondent should have communicated to us in this format before accepting the appointment as cost auditor of Continental India Private Limited. Violation of this provision is clear contravention of Clause (8) of Part I of First Schedule to the Cost Accountants Act, 1959.

The complainant had attached, along with his complaint, the following documents, among others:





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- i) A certified copy of the resolution passed by the Board of Directors of Continental India Private Ltd at its meeting held on 26.06.2019 approving the re-appointment of M/s Shome & Banerjee as cost auditor of the company for the FY 2019-20.
 - ii) A certified copy of the resolution passed by the Board of Directors of Continental India Private Ltd at its meeting held on 15.09.2020 approving the re-appointment of M/s Shome & Banerjee as cost auditor of the company for the FY 2020-21.
 - iii) A certified copy of the resolution passed by the Board of Directors of Continental India Private Ltd at its meeting held on 13.07.2021 approving the re-appointment of M/s Shome & Banerjee as cost auditor of the company for the FY 2021-22.
 - iv) A letter dated 22.06.2022 addressed to the Board of Directors of Continental India (P) Ltd written by the complainant, on behalf of the firm M/s Shome & Banerjee, Cost accountants (FRN 000001) offering themselves for re-appointment as cost auditor of Continental India (P) Ltd for the FY 2022-2023.
 - v) An email dated 30.08.2022 from Continental India (P) Ltd addressed to M/s Shome & Banerjee asking the firm to provide their "No regret offer for the Cost audit for the financial year 2022-23" and another email dated 1.09.2022 from the complainant addressed to one Shri Praful Raj, Purchasing Manager – NPM quoting cost audit fee of Rs 2,50,000/- as no regret offer.
 - vi) A brief profile of Continental India (P) Ltd where the name of M/s Shome & Banerjee appears as their cost auditors.
 - vii) On the second page of the company's profile, it is mentioned that for the FY 2022-23 M/S N.N. Sharma, Cost Accountant has been appointed by the Board of Directors as their cost auditors at a remuneration of Rs 1.55 lakhs.
 - viii) A Notification Ref. No. G/128/10/2022(3) dated 25th October 2022 issued by the Secretary of the Institute communicating the decision of the Council taken at its 337th meeting held on 11th September 2022 and providing the format of communication to the previous auditor and also mentioning that in case of non-compliance, a member in practice shall be liable to disciplinary proceedings as per Clause (8) of Part I of the First Schedule to the Cost and Works Accountants Act, 1959.
4. The complaint dated 15th May 2023 of the complainant was duly forwarded to the respondent vide letter No. G/DD/Com-CA(118)/(M-21494)/1/06/2023 dated 1st June 2023, requesting the respondent to send his response through a written statement in his defence within 21 days



[Handwritten signature]



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from the date of service of the said letter in terms of sub-rule (3) of Rule 8 of the Cost and Works Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules, 2007. The respondent, by a letter dated 15th June 2023, received by the Disciplinary Directorate on 19th June 2023 submitted his two-page written statement, which is reproduced below in verbatim:

Quote

As per the Cost Accountants Act 1959, The First schedule, part I, clause (8) requires to have a written communication & I submit that the communication was done with the previous Cost Auditor at the above mentioned address on 26th August 2022 through ordinary post (copy enclosed).

I understand that the mandatory need of notification implementation related to "Format of communication" with the previous Cost Auditor, issued by the Institute of Cost Accountants of India on 25th Oct 2022 by the Secretary of the Institute vide decision taken in 337th meeting of the council held on 11th Sept. 2022. The institute has prescribed the mandatory Format (of communication with the previous Cost Auditor) and has been made it effective from the date of this notification issued on 25th Oct 2022.

We submit that our appointment took place on 5th Sept 2022 which is before the above mentioned mandatory format of communication came into force, which was issued by the institute vide reference G/128/10/2022(3) on 25th Oct 2022 (copy enclosed).

I submit a humble request since the mandatory implementation in the defined format of notification was made mandatory effective on 25th Oct 2022 in the prescribed format and our appointment was done on 5th Sept 2022 which was done before this mandatory implementation of notification which came into force, the case shall be treated as null and void.

I request you to be sympathetic to me in this case as this was the only client in whose case there was a need of having written communication as per the prescribed format (made mandatory on 25th Oct 2022) from the previous auditor due to change of auditor. My all other clients till date are the first time appointments in our firm and there was no such need of written communication.

I through your good office make a humble request to complainant to withdraw the complaint as I have already resigned from the company (copy enclosed) in good faith.

I had all bonafide intents & there was no malicious intent or misstatement by me.

Unquote





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The respondent has enclosed the following along with his written statement:-

- a) a copy of a letter dated 26th August 2022 addressed to M/s Shome & Banerjee, where the complainant hold partnership and which has been claimed by the complainant to have been sent through ordinary post.
 - b) A Notification Ref. No. G/128/10/2022(3) dated 25th October 2022 issued by the Secretary of the Institute communicating the decision of the Council taken at its 337th meeting, held on 11th September 2022 and providing the format of communication to the previous auditor also mentioning that in case of non-compliance, a member in practice shall be liable to disciplinary proceedings as per Clause (8) of Part I of the First Schedule to the Cost and Works Accountants Act, 1959.
 - c) A letter of resignation dated 12th June 2023 (received on 19th June 2023) sent to the Board of Directors of Continental India Private Limited by the respondent informing his inability to act as cost auditor, with immediate effect, for the FY 2022-23 citing "unavoidable reason".
5. The written statement dated 15th June 2023 was sent to the complainant vide letter No. G/DD/Com-CA(118)/3/07/2023 dated 18th July 2023 requesting the complainant to send his rejoinder on the written statement, if any, within 21 days, in terms of sub-rule (4) of Rule 8 of the Rules. As no rejoinder from the complainant was forthcoming, another letter No. G/DD/Com-CA(118)/4/01/2024 dated 5th January 2024 was sent to the complainant with a request to send the rejoinder, if any, on the written statement.
6. The complainant vide letter dated 7th February 2024 provided the following rejoinder which is reproduced below:

Quote

I am in receipt of the written statement dated 15th June 2023 of the respondent. As per Rule 8(4) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 please find below my rejoinder on the written statement.

- 1) The respondent in his concluding Para has stated that "I request you to be sympathetic to me in this case as this was the only client in whose are there was a need of having written communication as per the prescribed format (made mandatory on 25th Oct 2022) from the previous auditor". By making this statement the respondent has accepted the fact that he did not comply with the guidelines issued by the Institute regarding communication to be sent to the previous auditor.
- 2) The logic put forth by the respondent in his written statement that in view of the fact that the mandatory need of notification implementation related to "format of



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communication" with the previous cost auditor was issued by the ICMAI on 25th October 2022 while the appointment of the respondent as a cost auditor took place on 5th September 2022 which was before the issuance of the notification does not hold good since as a cost auditor he should have communicated with the previous cost auditor immediately on his appointment as the cost auditor.

- 3) In any case, he has violated the provision of clause (8) of Part I of the First Schedule of the Cost and Works Accountants Act, 1959 by not communicating with the previous auditor as I have never received any such letter dated 26th August 2022 stated to have been sent by ordinary post, which was respondent has mentioned in his written statement. In fact, the respondent did not communicate with the previous cost auditor at all. This letter has been manufactured subsequently and is after thought.
- 4) If the respondent had any intent to communicate with the previous auditor before accepting the cost audit assignment, he could have sent the letter by registered post/speed post/courier instead of an ordinary post. This also speaks about the utter casual attitude of the respondent. By this act, the respondent has brought disrepute to the profession under Clause (2) of Part IV of the First Schedule to the Cost and Works Accountants Act, 1959.
- 5) By violating the above provisions of the Act, the respondent has also violated Clause (1) of Part II of the Cost and Works Accountants Act, 1959 which states that "a member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he contravenes any of the provisions of this Act or the regulations made there-under or any guidelines issued by the Council."
- 6) Finally, the respondent makes a request to Director (Discipline) to withdraw the complaint instead of contesting the same. The Director (Discipline) cannot withdraw the complaint unless specifically requested by the complainant. This clearly shows that the respondent is in back foot having committed the offence.

I therefore pray that necessary disciplinary action be taken against CMA Nand Nandan Sharma, the respondent which will act as a deterrent to other practicing cost accountants and the rules laid down by the Council are not flouted to suit their advantage.

Please condone the delay in our submission of the rejoinder.

Investigation & Analysis



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7. As part of the investigation that Director (Discipline) was empowered u/s 21 of the Cost Accountants Act, 1959, a letter No. G/DD/Com-CA(118)/CIPL/1/02/2024 dated 5th February 2024 was addressed to the Company Secretary of Continental India Private Ltd seeking the following clarification within a period of 07 (seven) days from the date of receipt of the communication:

- (i) Who was the cost auditor of Continental India Private Ltd for the FY 2020-21 & 2021-22?
- (ii) Was there a change in the cost auditor of the aforesaid company for the FY 2022-23?
- (iii) If yes, who was the cost auditor of the aforesaid company for the FY 2022-23 and the reasons for such change in cost auditor?
- (iv) To provide extract of minutes of Board meeting for appointment of the cost auditor of the company for the FY 2022-23.
- (v) To also provide a consent letter submitted by the new cost auditor, if any, for undertaking the work of cost audit in your company for FY 2022-23.
- (vi) To provide a copy of Form No. CRA-2 submitted by Continental India Private Ltd to the Central Government intimating such appointment of cost auditor for the FY 2022-23.
- (vii) To state whether the new cost auditor appointed by Continental India Private Ltd for the FY 2022-23 has intimated the previous cost auditor in terms of the applicable provisions of the Cost and Works Accountants Act, and the Notification dated 25th October 2022 regarding "Format of communication to the previous auditor" issued by the Institute of Cost Accountants of India.
- (viii) Whether the new cost auditor appointed for the FY 2022-23 has submitted its cost audit report? If so, to provide a copy of such report.

8. In response to the above letter of the Disciplinary directorate, CS Saroj Thakur, Legal Manager & Company Secretary, Continental India (P) Ltd, vide letter dated 14TH September 2024 provided the following clarifications:

Reference to the captioned subject matter, please see below our reply in seriatim for the queries raised by your good self-vide letter dated February 05, 2024 received by us on February 09, 2024 for your ready reference and consideration:

Query 1 : Who was the cost auditor of your company for the FY 2020-21 & 2021-22?





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Reply : M/s. Shome & Banerjee, Cost Accountants (Firm Registration No. 000001) were appointed/re-appointed as Cost Auditors for the Financial Year(s) 2020-21 and 2021-22, respectively, in accordance with the provisions of Section 148 of the Companies Act, 2013 read with the Companies (Audit and Auditors) Rules, 2014 to audit the cost accounting records of the company.

Query 2 : Was there a change in the cost auditor of your company for the FY 2022-23 ?

Reply: Yes, Details of change in Cost auditor stipulated below:

For the Financial Year 2022-2023, M/s. N.N. Sharma, Cost Accountants (firm Registration No. 101702) were appointed by the Board of Directors as Cost Auditors of the Company. However, M/s. N.N. Sharma, Cost Accountants, had resigned from the office of Cost Auditor of the Company vide resignation letter dated 12.06.2023 due to personal unavoidable reasons.

Pursuant to the resignation of M/s. N.N. Sharma from the office of Cost Auditor, casual vacancy occurred in the office of Cost Auditor which was filled by the Board of Directors by appointing M/s. Pradeep Sud & Co., Cost Accountants, (Firm Registration No. 100626) as Cost Auditor of the Company for the Financial Year 2022-23.

Query 3: If yes, who was the cost auditor of your company for the FY 2022-23 and the reasons for such change in cost auditor?

Reply : The Board of Directors of the Company in its meeting held on July 7, 2023, had appointed M/s. Pradeep Sud & Co., Cost Accountants (Firm Registration NO. 100626) for the Financial Year 2022-2023, due to casual vacancy in the office of cost auditor by resignation of M/s. N.N. Sharma, Cost Accountants due to personal unavoidable reasons.

Query 4: Please provide extract of minutes of Board meeting for appointment of the cost auditor of your company for the FY 2022-23

Reply : Extract of the Minutes of the Board of Directors meeting held on September 05, 2022 towards appointment of M/s. NN Sharma & Associates (Firm Registration No. 101702) for the Financial Year 2022-2023, is enclosed herewith as marked as "Annexure-1"

Extract of the Minutes of the Board of Directors meeting held on July 7, 2023, towards appointment of M/s. Pradeep Sud & Co., Cost Accountants (Firm Registration No. 100626) for the Financial Year 2022-2023, is enclosed herewith and marked as "Annexure-2".

Query 5: Please also provide a consent letter submitted by the new cost auditor, if any, for undertaking the work of cost audit in your company for FY 2022-23.



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Reply: Appointment & Resignation of Cost Auditors for the Financial year 2022-2023:

- Copy of Consent Letter dated 05.09.2022 as shared by M/s. NN Sharma & Associates towards their appointment as Cost Auditors of the Company for the Financial Year 2022-2023 is enclosed herewith and marked as "Annexure-3".
- Copy of Resignation letter dated 12.06.2023 as shared by M/s. NN Sharma & Associates, as Cost Auditors of the Company for the Financial Year 2022-2023 is enclosed herewith and marked as "Annexure-4".
- Copy of Consent letter dated 22.06.2023 as shared by M/s. Pradeep Sud & Co., Cost Accountants, (Firm Resignation No. 100626) towards their appointment as Cost Auditors of the Company for the Financial Year 2022-2023, is enclosed herewith and marked as "Annexure-5".

Query 6: Please provide a copy of Form No. CRA-2 submitted by your company to the Central Government intimating such appointment of cost auditor for the FY 2022-23.

Reply: Copy of Form No. CRA-2 as submitted by the Company to the Central Government intimating appointment of M/s. NN Sharma & Associates as Cost Auditors of the Company for the Financial Year 2022-2023 is enclosed herewith and marked as "Annexure-6".

Copy of Form No. CRA-2 as submitted by Company to the Central Government intimating resignation of M/s. NN Sharma as Cost Auditor of the Company of the Financial year 2022-2023 and Appointment of Pradeep Sud & Co. Cost Accountants, of the Company due to casual vacancy in the office of Cost Auditor caused by resignation of M/s. N.N. Sharma, Cost Accountants for the Financial Year 2022-23 is enclosed herewith and marked as "Annexure-7"

Query 7: Please state whether the cost auditor appointed by your company for the FY 2022-23 has intimated the previous cost auditor in terms of the applicable provisions of the Cost and Works Accountants Act, and the Notification dated 25th October 2022 regarding "Format of communication to the previous auditor" issued by the Institute of Cost Accountants of India.

Reply: No information on this point.

Query 8: Whether the new cost auditor appointed for the FY 2022-23 has submitted its cost audit report? If so, please provide a copy of such report.

Reply: M/s. Pradeep Sud & Co., Cost Accountants, submitted its Cost Audit Report in Board



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of Directors meeting dated 27.09.2023 for the Financial Year 2022-2023. Copy of the Cost Audit Report is enclosed herewith and marked as "Annexure-8".

In view of the aforementioned submissions, we humbly request your esteemed office to take on record our reply. Should you require anything further please let us know.

For Continental India Private Limited

Saroj Thakur
Legal Manager (Tires Market India) & Company Secretary
ACS: 24837

Enclosures : As above.

- (i) **Annexure-1:** Extract of Board Minutes dated September 05, 2022
- (ii) **Annexure- 2:** Extract of Board Minutes dated July 7, 2023.
- (iii) **Annexure-3:** Consent Letter dated 05.09.2022 by M/s. NN Sharma & Associates, Cost Accountants.
- (iv) **Annexure-4:** Resignation Letter dated 12.06.2023 by NN Sharma & Associates, Cost Accountants.
- (v) **Annexure-5:** Consent Letter dated 22.06.2023 by M/s. Pradeep Sud & Co., Cost Accountants.
- (vi) **Annexure- 6:** Copy of Form CRA- 2 towards appointment of M/s. NN Sharma & Associates, Cost Accountants for the FY 2022-23.
- (vii) **Annexure- 7:** Copy of Form CRA- 2 towards appointment of M/s. Pradeep Sud & Co., Cost Accountants, for the FY 2022-23.
- (viii) **Annexure- 8:** Copy of Cost Audit Report for the Financial Year 2022-2023'

9. As evident from the response of CS Saroj Thakur, Legal Manager & Company Secretary as well as the annexure enclosed with the letter of CS Thakur, the following facts stand confirmed:

- (i) That the complainant's firm M/s Shome & Banerjee were the cost auditors of Continental India (P) Ltd for the FY 2020-21, & 2021-22 and had quoted their fee for cost audit for the FY 2022-23 vide their letter No. S&B/74/2022 dated 23rd August 2022 and had even submitted their no regret offer vide email dated 1st September 2022.
- (ii) That the respondent's firm M/s N.N. Sharma & Associates was appointed cost auditors vide resolution dated 5th September 2022 of the Board of Directors.
- (iii) That consequent upon tendering of resignation by the respondent on 12th June 2023 from the position to act as cost auditors citing personal unavoidable reasons, casual vacancy occurred in the office of the cost auditor which was required to be filled by the





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Board of Directors of the company. It was then M/s Pradeep Sud & Co, firm of Cost Accountants (FRN 100626) were appointed vide resolution dated 7th July 2023 of the Board of Directors.

- (iv) That the company filed two Form CRA-2 for the FY 2022-23 – one for appointment of M/s N.N. Sharma & associates (Service Request date 22.09.2022) and subsequently another for M/s Pradeep Sud & Co, (Service Request date 25.07.2023)

Comments from Disciplinary Directorate

10. On perusal of the complaint dated 15th May 2023 of the complainant, the written statement dated 15th June 2023 of the respondent, the rejoinder dated 7th February 2024 of the complainant, the clarification dated 14th February 2024 provided by the company as well as the facts and circumstances of the case, it is abundantly clear that:

- (1) That there are reasons to believe that the respondent had not communicated in writing with the previous auditor i.e., M/s Shome & Banerjee while accepting the position as a cost auditor of Continental India (P) Ltd. The explanation provided by the respondent of having made communication dated 26th August 2022 through 'so called' ordinary post is after thought and appears to have been manufactured.
- (2) The respondent's contention that the mandatory need of notification implementation related to "Format of communication" with the previous Cost Auditor was issued by the Institute of Cost Accountants of India on 25th Oct 2022 by the Secretary of the Institute pursuant to the decision taken in 337th meeting of the council held on 11th Sept. 2022 and that the same (of communication with the previous Cost Auditor) has been made effective from the date of this notification issued on 25th Oct 2022 while his appointment was made on 5th September 2022 does not hold any ground because the respondent ought to have acted immediately after the issuance of such notification.
- (3) That the respondent, by a letter dated 12th June 2023 had tendered resignation as cost auditor of Continental India (P) Ltd itself proves that the respondent did not make any communication with the previous auditor as was required under Clause (8) of the Part I of First Schedule to the Cost Accountants Act, 1959 It is also clear that after the complaint has reached the respondent, he had tendered his resignation as cost auditor citing "personal avoidable reasons".
- (4) The respondent, instead of refuting the allegations levelled against him prays for sympathy in as much as he mentions in his written statement this was the only client in whose case there was a need of having written communication as per the prescribed format (made mandatory on 25th Oct 2022) from the previous auditor due to change of





THE INSTITUTE OF COST ACCOUNTANTS OF INDIA

(Statutory Body under an Act of Parliament)
CMA Bhawan, 3 Institutional Area,
Lodhi Road, New Delhi-110003

Phone : +91-11-24622156-57-58
011-24666109
Mail id-discipline.director@icmai.in
Website : www.icmai.in

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auditor." His all other clients till date are the first time appointments in his firm and there was no such need of written communication.

- (5) By violating the provisions of Clause (8) of the Part I of First Schedule to the Cost Accountants Act, 1959 and not adhering to the notification dated 25th October 2022 issued by the Secretary, the respondent has also violated Clause (1) of Part II of the Second Schedule of the Cost and Works Accountants Act, 1959 which states that "a member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he contravenes any of the provisions of this Act or the regulations made there-under or any guidelines issued by the Council."
- (6) The respondent had also brought disrepute to the profession or the Institute as a result of his action whether or not related to his professional work. [Clause (2) of Part IV of First Schedule to the Cost Accountants Act, 1959].

Prima facie opinion

11. In the 84th (Adjourned) meeting of the Disciplinary Committee held on 11th May 2024, the prima facie opinion together with the documents relied upon was placed by Director (Discipline) in terms of Rule 9(2)(a)(ii) of the Cost and Works Accountants (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007 and the same was agreed and accepted by the Committee in terms of Rule 9(2)(b) of the Rules. The above-mentioned complaint has been examined in pursuance of Section 21 of the Cost and Works Accountant Act, 1959 as amended in 2006 read with Rule 9 of the Cost and Works Accountants (Procedure of Investigations of Professional and other Misconduct and Conduct of Cases) Rules, 2007, CMA Nand Nandan Sharma (M/32170) respondent, is guilty of contravening the following provisions of the Cost and Works Accountants Act, 1959:

- Clause (8) of the Part I of First Schedule to the Cost Accountants Act, 1959.
- Clause (2) of Part IV of First Schedule to the Cost Accountants Act, 1959].
- Clause (1) of Part II of the Second Schedule of the Cost Accountants Act, 1959.

12. The Committee noted that this was a fit case against the respondent to be proceeded against in the light of the violations committed by the respondent and directed Director (Discipline) to proceed further under Chapter V and ensure compliance of Rule 18(2)/18(3) of the Rules.

13 In accordance with such directives of the Committee, the prima facie opinion dated 11th May 2024 was sent both to the complainant and the respondent under the cover of letter Nos. G/DD/Com-CA(118)/(M-32170)/PFO/4/05/2024 & G/DD/Com-CA(118)/(M-21494)/PFO/2/05/2024 both dated 14th May 2024 requiring the latter to send his written statement within 21 days from the date of receipt of the aforesaid communication.



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14 The respondent, vide letter dated 3rd June 2024 submitted his second written statement which is reproduced below:

Quote

This is in reference to the mail received vide reference no. G/DD/Com-CA(118)/(M-21494)/PFO/2/5/2024 dated 14th May 2024 received at my end by speed post on 21st May 2024.

I am in receipt of Prima Facie Opinion (PFO) dated 11th May 2024.

My response to the subject/complaint is the same as I had submitted vide my mail dated 15th June 2023, wherein I had submitted all the relevant documents to substantiate my stand. The copy of same is enclosed herewith again for your kind reference please.

Annexed herewith point wise response to the points mentioned on page number 13 & 14 of PFO.

I reiterate that I did all the compliance as per requisite & with all bonafide intents, with deep respect to our mother Institute & my fraternity members.

I again make a request to the complainant to be consideration and withdraw the complaint.

As instructed, I am sharing the complete set of documents along with written statement response to the PFO points as mentioned in the mail to the complaint also.

Point wise response to PFO of your mail dated 14th May 2024

- 1) That there are reasons to believe that the respondent had not communicated in writing with the previous auditor i.e., M/s. Shome & Banerjee while accepting the position as a cost auditor of Continental India (P) Ltd. The explanation provided by the respondent of having made communication dated 26th August 2022 through 'so called' ordinary post is after thought and appears to have been manufactured.

My response

- 1) The Cost Accountants Act 1959 clearly states vide First schedule (Part- I), reference clause number 8, it clearly states that

"Accepts a position as cost accountant previously held by another cost accountant without first communicating with him in writing" (Copy enclosed-1)



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The act clearly states that the communication shall be in writing with the previous cost auditor but in the act it's not mentioned anywhere the mode of written communication.

As shared in my previous communication dated 15th June 2023, that the mandatory adherence & effective implementation Format & mode of communication was issued by the secretary of the Institute on 25th Oct 2022. The 337th meeting of the council had prescribed the format for its adherence with a note of Noncompliance shall be liable for disciplinary proceedings as per clause (8) of the first schedule of Cost Accountants Act 1959. Only this format/notification made it mandatory to have the written communication through registered/speed post on & after 25th Oct 2022.

Our appointment had taken place on 5th Sept 2022 before the issuance of this mandatory implementation of notification & the said notification has NOT specified for its implementation with retrospective effect.

Hence spelling our mail communication through ordinary post on 26th August 2022 cannot be termed as noncompliance on the specific date & terming it as manufactured is baseless & far from the fact & the truth.

- 2) The respondent's contention that the mandatory need of notification implementation related to "Format of communication" with the previous Cost Auditor was issued by the Institute of Cost Accountants of India on 25th Oct 2022 by the Secretary of the Institute pursuant to the decision taken in 337th meeting of the council held on 11th Sept. 2022 and that the same (of communication with the previous Cost Auditor) has been made effective from the date of this notification issued on 25th Oct 2022 while his appointment was made on 5th September 2022 does not hold any ground because the respondent ought to have acted immediately after the issuance of such notification.

My response

2) As mentioned above in point number 1, since the appointment had happened on 5th Sept 2022 before the issuance of "Format of Communication" & mode of its communication/notification mandatory implementation came effective from the date of its issuance, i.e. 25th Oct 2022, in this scenario its incorrect to expect the respondent to send the past acts/appointments in the format & mode flashed in the notification for the previous appointment before the date of said communication effective implementation on date (i.e. 25th Oct 2022)

- 3) That the respondent, by a letter dated 12th June 2023 had tendered resignation as cost auditor of Continental India (P) Ltd. itself proves that the respondent did not make any communication with the previous auditor as was required under Clause (8) of the Part I



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of First Schedule to the Cost Accountants Act, 1959 it is also clear that after the complaint has reached the respondent, he had tendered his resignation as cost auditor citing "personal avoidable reasons".

My response

- 3) Respecting the complainant firm & its repute, I never wished to have any disrespect to any individual or institution, and being a part of same fraternity member, I took the decision.
- 4) The respondent, instead of refuting the allegations leveled against him prays for sympathy in as much as he mentioned in his written statement this was the only client in whose case there was a need of having written communication as per the prescribed format (made mandatory on 25th Oct 2022) from the previous auditor due to change of auditor." His all other clients till date are the first time appointments in his firm and there was no such need of written communication.

My response

- 4) As the case is null & void, for that very reason I submitted to be sympathetic to the facts. To substantiate my response I had submitted the relevant support documents in my previous communication on the subject dated 15th June 2023
- 5) By violating the provisions of Clause (8) of the Part of First Schedule to the Cost Accountants Act, 1959 and not adhering to the notification dated 25th October 2022 issued by the Secretary, the respondent has also violated Clause (1) of Part II of the Second Schedule of the Cost and Works Accountants Act, 1959 which states that "a member of the Institute, whether in practice or not, shall be deemed to be guilty of professional misconduct, if he contravenes any of the provisions of this Act or the regulations made there-under or any guidelines issued by the Council."
- 6) The respondent had also brought disrepute to the profession or the Institute as a result of his action whether or not related to his professional work [Clause (2) of Part IV of First Schedule to the Cost Accountants Act, 1959].

My response

5 & 6) I disagree to the fact that I have done any misconduct or any professional misconduct. I have not brought any disrepute to the profession of the Institute.





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Point # 1 to 3 as mentioned above covers all my responses & are the facts, truth & submitted all with bonafide intent.

15 In the 86th meeting of the Committee held on 19th July, 2024, Committee directed Director (Discipline) to call both the complainant and the respondent in the next meeting of the Committee for making oral submissions in terms of Rule 18(6) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

16. In accordance with such directions of the Committee, both complainants as well as respondent were called for making oral submissions, if any, under Rule 18(6) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007 Rules.

17. Complainant appeared personally at the scheduled date and time and made *inter alia* the following submissions:

- I. The respondent had accepted a position as Cost Auditor of Continental India Private Limited, previously held by him without communicating with him in writing thereby clearly contravening the provisions of clause (8) of Part I of First Schedule of the Cost Accountants Act, 1959.
- II. This act of the respondent of not communicating with the previous cost auditor has brought disrepute to the profession and thereby clearly contravening Clause (2) of the Part IV of First Schedule to the Cost Accountants Act, 1959
- III. The Council has reiterated its decision in a number of subsequent notifications mentioning therein that the communication to the previous cost auditor has to be made mandatorily by every cost accountant as per the prescribed format and violation thereof will be considered as contravention of Clause (8) of Part I of First Schedule to the Cost Accountants Act, 1959. The Respondent should have communicated to us in this format before accepting the appointment as cost auditor.
- IV. I have never received any such letter dated 26th August 2022 stated to have been sent by ordinary post, which was respondent has mentioned in his written statement. In fact, the respondent did not communicate with the previous cost auditor at all. This letter has been manufactured subsequently and is after thought.



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- V. If the respondent had any intent to communicate with the previous auditor before accepting the cost audit assignment, he could have sent the letter by registered post/speed post/courier instead of an ordinary post. This also speaks about the utter casual attitude of the respondent.

The Committee took on record the submissions made by the Complainant.

18. Respondent also appeared personally on the scheduled date and time. The Committee read out the charges as required under Rule 18(7) of the Rules together with the summary of the prima facie opinion. The respondent did not plead guilty and made *inter alia* the following oral submissions:-

- I. As per the Cost Accountants Act 1959, The First schedule, part I, clause (8) requires to have a written communication & I submit that the communication was done with the previous Cost Auditor at the above mentioned address on 26th August 2022 through ordinary post.
- II. I understand that the mandatory need of notification implementation related to "Format of communication" with the previous Cost Auditor, issued by the Institute of Cost Accountants of India on 25th Oct 2022 by the Secretary of the Institute vide decision taken in 337th meeting of the council held on 11th Sept. 2022. The institute has prescribed the mandatory Format (of communication with the previous Cost Auditor) and has been made it effective from the date of this notification issued on 25th Oct 2022.
- III. I submit that our appointment took place on 5th Sept 2022 which is before the above mentioned mandatory format of communication came into force, which was issued by the institute vide reference G/128/10/2022(3) on 25th Oct 2022.
- IV. I submit a humble request since the mandatory implementation in the defined format of notification was made mandatory effective on 25th Oct 2022 in the prescribed format and our appointment was done on 5th Sept 2022 which was done before this mandatory implementation of notification which came into force, the case shall be treated as null and void.
- V. I have already resigned from the company in good faith.
- VI. I had all bona fide intents & there was no malicious intent or misstatement by me.



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19. The Committee took note of the same and directed Director (Discipline) to issue notice to both the complainant and respondent for examination of witness and production of documents in terms of Rule 18(9) of the of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.

20. In accordance with such directions of the Committee, letters dated 17th September, 2024 were sent via mail to the complainant as well as to the respondent requiring their presence under Rule 18 (9) of the Cost and Works Accountants (Procedure of Investigation of Professional and Other Misconduct and Conduct of Cases) Rules 2007 for examination of witness and production of documents.

21. Both Complainant and respondent appeared personally at the scheduled date and time. Complainant had submitted the copy of Guidance Note on Companies (Cost Records and Audit) Rules 2014, issued by the Professional Development Committee of the Institute in January, 2016. As per the draft of communication to the previous Cost auditor of the said guidance note "the communication must be addressed by Registered/Speed Post".

22. The respondent reiterated that communication was done with the previous Cost Auditor on 26th August 2022 through ordinary post. He further stated that, the mandatory need of notification implementation related to "Format of communication" with the previous Cost Auditor, issued by the Institute of Cost Accountants of India on 25th Oct 2022 by the Secretary of the Institute vide decision taken in 337th meeting of the council held on 11th Sept. 2022. The institute has prescribed the mandatory Format (of communication with the previous Cost Auditor) and has been made it effective from the date of this notification issued on 25th Oct 2022 whereas his appointment took place on 5th Sept 2022 which is before the above mentioned mandatory format of communication came into force.

23. The Committee took on record the submissions made by the Complainant and respondent.

24. The Committee after considering all the evidences and arguments produced before it, observed that as there was no prescribed mode of sending intimation to the previous auditor; ordinary post can be considered as proper intimation as required under the provisions of the Cost Accountants Act, 1959. The Committee unanimously decided to drop the proceedings against the respondent.





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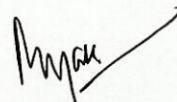
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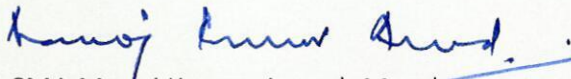
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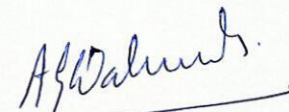
25. Accordingly, the proceedings against the respondent are dropped and the matter is closed in accordance with Rule 19(2) of the Cost and Works Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007.


26. Thus, the matter stands disposed of.

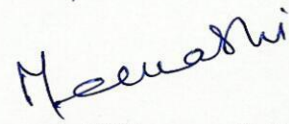
19th November, 2024


CMA Bibhuti Bhusan Nayak
PRESIDING OFFICER


CMA Manoj Kumar Anand, Member


CMA Ashwin G Dalwadi, Member


Shri Saraswati Prasad, IAS (Retd.)
Govt. Nominee


Smt. Meenakshi Sharma, IA & AS (Retd.)
Govt. Nominee

